including people of all races, ethnicities, and disabled persons, and regardless of gender. The opening of an entire new bandwidth will allow for the return of the analog bandwidth by the licensed broadcasters. Disenfranchised persons, unable to participate in the mainstream, established media market, could then have access to these alternatives thereby circumventing the obstacles they had previously faced. The FCC could distribute funds in support of this public policy goal generated in part or in whole from the fees it charges existing broadcast licensees. I would suggest a program of this sort for implementation once the switchover and simulcasting periods have elapsed and the digital broadcast licensees return the analog bandwidth. This is a key component in the continuing effort to provide access to our society's many opportunities to people regardless of race, color, religion, national origin, sex, or disability status.

Furthermore, DTV technology will allow disabled persons much greater access to the world around them. By implementation of closed captioning systems, and the remarkable datastream capabilities of DTV, blind and deaf persons will enjoy unprecedented access to information, entertainment, and the electronic marketplace. The FCC should set forth mandatory minimum requirements, again with voluntary, incentive-driven higher standards, for the availability of closed captioning, video description services, and associated technologies in the new digital broadcasting format. A "phase-in" period of several years would be appropriate given the significant costs involved and the legitimate interest in avoiding undue burdens on the broadcast licensees.

Disclosure

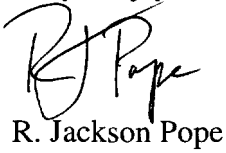
Finally, I recommend enhanced disclosure requirements pertaining to DTV broadcast licensees. Increased specificity and access on the near universal licensee website.

Implemented together with the mandatory minimum public interest requirements suggested above, as well as the voluntary, incentive-based enhanced standards, this would permit public as well as official scrutiny of the broadcast licensees' compliance, specifically, and their level of commitment to the public interest, generally. Individual members of the community would invariably be much more likely to virtually inspect a licensee's required public filings via the internet at their convenience than they would be to travel to the licensee's location and physically inspect them. Licensees are currently permitted to maintain their public file electronically. This simply expands upon that provision and allows access to the public by means the public is increasingly using as a tool for civic and commercial behavior.

Conclusion

In conclusion, I would like to remark that while flexibility in implementation and avoidance of undue burdens upon the DTV broadcast licensees are important goals, the underlying public policy interests are crucial. They must be preserved at the very least and enhanced if at all possible. Digital technology is indeed a wonderful opportunity for this nation, its citizens, and future generations. DTV, in particular, is important due to the familiarity of the vast majority of Americans with television's general format, relative to the internet or wireless communications technology. To most folks a TV is a TV. That being the case, this represents an opportunity to include them in the digital revolution even if they don't realize they are participating.

Very truly yours,



R. Jackson Pope

CC: Glenn H. Reynolds

March 17, 2000

Michael L. Berman
301 Cheshire Drive #86
Knoxville, TN 37919

Federal Communications Commission
445 12th Street
Room TW-A306, SW
Washington, DC 20554

Re: Public Comment in response to the FCC's Notice of Inquiry; MM Docket No. 99-360; FCC 99-390; 65 FR 4211; Public Interest Obligations of Television Broadcast Licensees

Dear Commissioners:

I am law student at the University of Tennessee writing in response to the FCC's request for public comments, 65 Fed. Reg. 4211, (January 26, 2000). The FCC should take this opportunity in formulating new policy regulations regarding digital television to protect children from violent television. In order to serve the public interest, broadcasters should be required to develop mechanisms to protect children. The interactive capabilities of digital television make it possible to require viewers to prove their age.

Violent Television Significantly Damages Children

Children learn from the events that they watch on television.[1] The behavior that children witness is considered acceptable behavior and may be reproduced in their everyday activities.[2] Due to this mimicking or social effect from watching violent television, people should not be surprised to read about shootings at elementary and high schools across the United States.[3] In fact, violence experienced by American students in public schools is reaching epidemic proportions.[4]

The Surgeon General has classified television violence as a public health problem, and the placing of the TV violence controversy in the same context as the smoking and lung cancer controversy accurately frames the issue.[5] The 1972 Surgeon General's report concluded that violence on television does influence children who view that programming and does increase the likelihood that they will become more aggressive in certain ways.[6] In 1982, a landmark report based on ten years of research from the National Institute of Mental Health concluded that

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[1] *See* Eleanor Singer, *Reference Groups and Social Evaluations, in* SOCIAL PSYCHOLOGY: SOCIOLOGICAL PERSPECTIVES 90-91 (Morris Rosenberg & Ralph H. Turner eds., 1992).
[2] W. JAMES POTTER, ON MEDIA VIOLENCE 43 (1999).
[3] *Id.*
[4] *See* M. Furlong, G. Morrison, & J. Dear, *Addressing School Violence as Part of Schools' Educational Mission*, 38 PREVENTING SCH. FAILURE 10, 11 (1994).
[5] *See* NEWTON N. MINOW & CRAIG L. LAMAY, ABANDONED IN THE WASTELAND: CHILDREN, TELEVISION, AND THE FIRST AMENDMENT 28 (1995).
[6] *Id.*

violence on television affects the aggressive behavior of children.[7]

There is a wide range of research to support the detrimental effects that violent programming has on children.[8] Further, the short-term effects of viewing violent television have a longer lasting impact on younger children.[9] Longer-term studies are fewer in number, but the studies still conclude that children watching violent television are more violent than other children.[10]

One long-term study began in 1960 by assessing the development of aggression in eight-year-olds in a small upstate New York town.[11] In the course of the study, the researcher asked children to report on their television viewing and other activities.[12] The researcher also interviewed teachers and children to determine, which children were more aggressive or less aggressive.[13]

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[7] *Id.*
[8] *See* T. VAN DER VOORT, TELEVISION VIOLENCE: A CHILD'S-EYE VIEW 16 (1986).
[9] *See* Harris Pack & Glenn Comstock, *The Effects of Television Violence on Antisocial Behavior*, 21 COMM. R. 3, 516 (1994).
[10] *See* L. D. Eron & R. G. Slaby, *Introduction, IN* REASON TO HOPE: A PSYCHOLOGICAL PERSPECTIVE ON VIOLENCE AND YOUTH 2 (L.D. Eron, et. al., eds. 1994).
[11] *See* L. D. Eron, *Parent Child Interaction, Television Violence and Aggression*, 27 AMER. PSYCHOL. 197, 198 (1982).
[12] *See id.*
[13] *See id.*

Information from parents about children's television viewing and the parent's home discipline and family values were incorporated into the results of the study.[14] At the age of eight, the research revealed a relationship between a child's level of aggressive behavior and their television viewing.[15] These children were re-examined at the age of ten and eighteen.[16] The research revealed that the children who watched violent television at age eight were more likely to display violent behavior at age eighteen, even though the child's viewing of violent television had decreased.[17]

In the 1980's, the study re-interviewed these children who were now the age of 30.[18] Interestingly, there was a relationship between early television viewing and arrest and conviction for violent interpersonal crimes: spouse abuse, child abuse, murder, and aggravated assault.[19] Thus, there are long-term effects of early television viewing on later aggressive behavior.[20]

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[14] *See id.*
[15] *See id.* at 199.
[16] *See id.* at 200-01.
[17] *See id.* at 201.
[18] *See id.* at 203.
[19] *See id.*
[20] *See id.* at 209.

Current Efforts are Insufficient to Protect Children From Harmful Television

Over thirty years ago, the FCC began to recognize the detrimental effects that television could have on children and requested that broadcasters do a better job of protecting the nation's children.[21] Despite the request for voluntary action from the private sector, television programming did not change significantly.[22] Nor is it likely that the private sector will voluntarily implement mechanisms to prevent children from seeing violent and sexually explicit television programming.[23] In 1990, Congress tried to intervene with the passage of the Children's Television Act.[24] While this agency responded by requiring broadcasters to air educational children's television, beyond a passive ratings system, nothing has been done to protect children from seeing other television programming.[25]

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[21] *See* Ronald J. Krotoszynski, *The Inevitable Wasteland: Why the Public Trustee Model of Broadcast Television Regulation Must Fail*, 95 MICH. L. REV. 2101 (1997).
[22] *Id.* at 2103.
[23] *Id.* at 2104.
[24] Pub. L. No. 101-437 (1990).
[25] *See* Michael J. Palumbo, *Broadcast Regulation, Has the Market Place Failed the Children*, 15 SETON HALL LEGIS. J. 345, 398-99 (1991).

Digital Television Can Help Child-proof Television Broadcasts

Since digital television has the capability to be interactive, the FCC should require that broadcasters develop technology to "child-proof" violent programs.[26] In other words, the broadcasters should receive a message that the viewer is over the age of eighteen. This would allow the broadcaster to know that the audience receiving the programming has reached an appropriate age necessary to view violent programming.

While educational television can definitely benefit children, the requirements for educational television do not stop children from viewing violent programs. There are many household items that require "child-proofing" for the safety of the child. For instance, parents often cover electrical outlets or buy lighters with child safety features. Like these lighters with child safety features or pill bottles with child safety lids, violent television may be rendered harder to access. However, a parent would have to be able to easily access the information with some degree of privacy. In other words, the parent would send some information over digital television to

[26] *See* GERALD O'DRISCOLL, THE ESSENTIAL GUIDE TO DIGITAL SET-TOP BOXES AND INTERACTIVE TELEVISION 2 (1999); *see also* Eric Gsell et. al., *Digital Television Interoperability Issues and Progress* (visited Mar. 14, 1999) <http://www.attc.org.> (explaining the technological feasibility of sending messages from digital televisions).

let the broadcaster know that the viewer is over the age of eighteen.

Privacy Concerns

While some people may be concerned about privacy, this proof of age is a minimal intrusion that is common to many other daily activities. A digital television should only let the broadcaster know that the viewer is over the age of eighteen and not collect any other information. This could be accomplished by attaching a card-swiping device to each television or issuing a code number to all people over the age of eighteen.

Certainly, the public may be inconvenienced by the need to prove one's age before watching violent television, but people have to prove their age for a multitude of activities. For instance, a person has to prove their age before buying liquor, buying tobacco, buying pornography, or going to an "R" or "X" rated movie. By requiring people to prove that they have reached a certain age, society is protecting children from harmful substances and information.

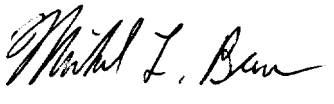
Since people are conditioned or expect to prove their age before experiencing an explicitly violent movie, the public will probably not mind submitting to "child-proofing" television. In

fact, broadcasters could send truly violent programming to viewers over the age of eighteen without being afraid that children would watch this programming. Thus, the public will appreciate the ability to be able to view adult-oriented programming, and the adults will not mind this new confirmation of age before viewing these new shows on digital television.

Conclusion

The FCC should take this opportunity in formulating new policy regulations regarding digital television to protect children from violent television. In order to serve the public interest, broadcasters should be required to develop mechanisms to protect children. The interactive capabilities of digital television make it possible to require viewers to prove their age.

Sincerely,



Michael L. Berman

FROM THE DESK OF
BEN M. ROSE

FORMER STAFF MEMBER TO
U.S. CONGRESSMEN
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TELEPHONE (423) 609-7769

March 17, 2000

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Dear Ms. Salas,

I am writing this letter regarding the Notice of Proposed Rulemaking, "Public Interest Obligations of Television Broadcast Licensees," January 26, 2000, MM Docket No. 99-360, FCC 99-390, 47 CFR Part 73, and will comment on public interest requirements of broadcasters in the age of digital television, proposals by the Commission related to enhancing diversity in this new medium, and in general access to the media by political candidates.

As a former legislative assistant to two members of the U.S. House of Representatives, I have had a general exposure to these and other related telecommunications issues. However, this comment is a product of a legal course on Administrative Law at the College of Law, University of Tennessee-Knoxville, Tennessee. In this regard, it should be noted that the views contained herein do not necessarily represent the views of my former employers.

INTRODUCTION

Before commenting on specific areas in the summary of the notice of inquiry, I think it is important to keep in mind the general spirit of the Telecommunications Act of 1996. In my

view, this enactment which comprehensively reformed telecommunications for the first time in nearly 70 years was meant to effectively deregulate[1] television, telephone, and other important communications industries. By deregulating these industries, the theory is that competition is increased, prices are reduced, and innovations are created more rapidly.

Unfortunately, this goal has not yet become a reality. I believe this result is the product of three main ingredients: (1) an ambiguous statute passed by the U.S. Congress and signed into law by President William J. Clinton, (2) a cadre of special interests including various television broadcasters, cable and satellite companies, long distance and local telephone communications corporations, and numerous others, and (3) an activist federal agency, namely the Commission, which aims to produce new regulations to justify its bureaucracy rather than enforce its current regulations. Taken together, these have radically distorted the dream of a truly deregulated telecommunications industry, and at best, our Nation can now only hope for this reality in the distant future.

As Chairman of the House Telecommunications Subcommittee W.J. "Billy" Tauzin recently remarked, the Telecommunications Act of 1996 was made as ambiguous as possible to get it passed and signed into law. Special interests do, have, and always will influence the legislative process despite even the most well intentioned reforms. However, in my mind there is simply no excuse for overactive administrative agencies that are more concerned about protecting their own

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[1] In reality, of course, nothing in Washington, D.C. is actually "deregulated," *i.e.* freed from all oppressive government regulation. This is a misnomer. Rather, these areas are "re-regulated" to better enhance these important goals and at the same time retain accountability.

bloated bureaucracies than the welfare of the American public. In this vein, I would like to comment on the public interest requirements of television broadcasters in this digital age, diversity proposals, and enhancing access to the media by political candidates.

PUBLIC INTEREST REQUIREMENTS

47 U.S.C. § 336(h) provides, "Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity . . . the television licensee shall establish that all of its program services on the . . . spectrum are in the public interest." I would encourage the Commission to read this statute as narrowly as possible. There is nothing in § 336(h) which imposes additional public interest requirements on digital television, despite the contentions of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, People for Better TV, and indeed the Federal Communications Commission itself.

Rather, digital television broadcasters should be held to the current public interest requirements for regular analog licenses and nothing more. This interpretation is within the boundaries of the statute. Although perhaps beyond the scope of this notice of inquiry, I would encourage both the Congress and the Commission to go beyond these boundaries in the original spirit of the Telecommunications Act of 1996 and allow the free market to better influence these public interest requirements with a few exceptions. These exceptions include notification of the public in times of emergency or disaster, prohibitions on broadcast of obscene material for minor viewers, and some limited services for the disabled.

In considering the public interest, I am often aghast at the presumption by some that this interest requires additional oppressive regulation and not an enhancement of the free market. With our current economic boom, it should come as no surprise even to the bureaucracy of the federal government that often the public interest can best be served by deregulation and allowing our free enterprise system to fulfill the needs of the polity. Imagine, if you will, a brave new telecommunications world relatively free of regulation. In this case, digital television that is constrained only by requirements to provide services for emergencies, protect children, and in a limited capacity provide services for the disabled.

A. Emergency Services

In paragraph 18 of the notice of inquiry, the Advisory Committee Report is quoted as stating, "Broadcasters should work with appropriate emergency communications specialists and manufacturers to determine the most effective means to transmit disaster warning information. The means chosen should be minimally intrusive on bandwith and not result in undue additional burdens or costs on broadcasters." This recommendation is appropriate although due consideration needs to be given for privacy concerns.[2] Our federal government has a responsibility to protect the public from harm as reflected in the preamble to the U.S. Constitution.

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[2] According to the notice of inquiry, the Advisory Committee Report suggests new ways that digital technology can help alert citizens to certain disasters or emergencies including "pinpointing specific households or neighborhoods at risk." While this is certainly an admirable goal, I believe that steps would need to be taken to protect the identities of these individual residences or in some cases neighborhoods. Also, there should be consideration given to state and local agencies in performing these functions.

It provides in pertinent part "We the people of the United States, in Order to . . . insure domestic Tranquility . . . promote the general Welfare . . . do ordain and establish this Constitution for the United States of America." While providing emergency services could be performed in large part by the free market, I believe our federal government should require broadcasters to provide for this service. The Commission should enact regulations after appropriate comment from the public and due consideration by the broadcast industry, to make as a requirement for licensure that digital television broadcasters provide some type of emergency warning or service for disasters or other similar emergencies.[3]

B. Obscenity

While much ado has been made recently about the amount of violence on broadcast television and several remedies have been proposed, relatively little has been mentioned about the alarming increase in sexual content and depictions of sexuality on broadcast television, not to mention cable and satellite subscription services. Whether it is "NYPD Blue" or the briefly popular sitcom "Ellen," our children are being infiltrated with messages of sexual promiscuity and demoralization of sexual preferences. As I understand the current federal law, under the Children's Television Act of 1990 broadcasters are "prohibited from airing programming that is obscene, and

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[3] I do not mean that the Commission should formulate a standardized plan or system which would be applied to all digital broadcasters. Such micromanagement will only lead to inefficiency and ultimately failure to achieve the stated goal of warning the public about emergencies.

restricted from airing programming that is 'indecent' during certain times of the day."[4] It is my belief that our Constitution also provides for additional protections.

Although admittedly not an immediate issue in this notice of inquiry, I would encourage the Commission to interpret this and similar statutes dealing with obscenity in the broadest sense. Obscenity, unfortunately, is one of the few areas that the free market has failed to appropriately regulate. Here, like with emergency services, is an opportunity for the federal government to play a role. Such a notion may be known as "moral capitalism." The Commission should enact regulations again after appropriate comment from the public and due consideration by the broadcast industry, to make as a requirement for licensure that digital broadcasters *eliminate* any "indecent" or "obscene" programming during any time of the day with regard to sexual content. Such action would be in the public interest and especially in the interests of minors without proper parental authorities. While I certainly have regard for the rights contained within the 1st Amendment, our children and their future should at times come before mere expression and entertainment.

C. Services for the Disabled

Finally, in paragraph 24 of this notice, People for Better TV ask the Commission to emphasize the "'expansion of services to person [sic] with disabilities.'" In a similar vein, the Advisory Committee recommends that digital broadcasters take "'full advantage' of new digital technologies to prove 'maximum choice and quality for Americans with disabilities.'" Of course, maximum choice will only come from the free market. However, I believe that in this area of

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[4] See paragraph 2 of this notice.

disability services there is also a role for the federal government and which is provided by the Constitution.

Part of these services are already being offered by broadcasters including closed captioning for the hearing impaired. "[C]losed captioning rules require broadcasters . . . to caption new programming gradually, according to a phase-in schedule, and to caption 75% of 'pre-rule' programming by 2008."[5] This policy is working and should be maintained along this schedule. In addition, as I understand the issue of closed captioning, these efforts are also being helped by private enterprises like Bell Atlantic and others.

The Commission should enact regulations after appropriate comment from the public and due consideration by the broadcast industry, to make as a requirement of licensure that digital television broadcasters provide some type of services for individuals with disabilities including ancillary services. However, due care should be taken to prevent overburdening broadcasters with these requirements and locking them into broad unfunded federal mandates as are contained within the American with Disabilities Act of 1990.

Providing emergency services, protecting children from obscenity, and providing disability services should be the only requirements imposed by the Commission in this area. I vigorously object to the Advisory Committee's proposal that there be "minimum public interest requirements." The Commission should work with the digital broadcasters in a flexible manner, and in my opinion, minimum requirements militate against this important goal.

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[5] See paragraph 26 of this notice.

DIVERSITY REQUIREMENTS

I want to congratulate the Clinton Administration for the appointment of Chairman William E. Kennard, who as an African-American has been a role model for all Americans. However, I am dismayed by the fact that this notice of inquiry contains a section which amounts to what I fear may be an advocacy of affirmative action with a foundation of race and gender-based preferences. While it is true that 47 U.S.C. § 309(j) contains language directing the Federal Communications Commission to formulate competitive bidding rules which would promote the economic opportunities of racial minorities and women, I would remind the Commission that this statute does not contemplate institution of an affirmative action, racial quota, or similar scheme *per se*. This interpretation would also seem to go against the spirit of the Administration's policy of "mend it, don't end it."

However, I believe that such a scheme was contemplated and proposed by the Advisory Committee. In its report, the Committee recommended "out of the returned analog spectrum one new 6 Mhz channel for each viewing community to be reserved for noncommercial purposes, including educational programming directed at minority groups." One need not look any further than Black Entertainment Television (BET) to determine why this is a poorly conceived idea. As indicated by the success of BET, the free market should determine whether, if all, it is in the public interest to have channels dedicated exclusively to minorities in our country.

The Commission should not misinterpret § 309(j) and enact regulations which are in essence affirmative action or racial quota programs that discriminate on the basis of skin color.

Moreover, the Commission should explicitly reject the Advisory Committee's recommendations which would require broadcasters to provide "black," "brown," or similar minority focused television channels. Finally, I would caution the Commission to not be overly influenced by special interest groups like La Raza and the National Association for the Advancement of Colored People (NAACP) which have their own agendas which may arguably be different than that of a majority of their constituencies.

CAMPAIGN REFORM AND THE MEDIA

Recently, the issue of campaign finance reform, although of relative unimportance to a majority of the American electorate according to recent polling, has been at the forefront of our public debate. Alas, a proposal of requiring television broadcasters to essentially donate free television time for political candidates is contained in this summary of the notice of inquiry. Similar proposals are contained in the famed and yet ill-conceived McCain-Feingold Campaign Reform Bill and other legislative campaign reform plans. I believe that such reforms are shortsighted and should be discouraged by the Commission.

Interestingly, the area of campaign reform is representative of the view that the Commission is an activist federal agency which aims to produce new regulations to justify its bureaucracy rather than enforce its current regulations. For example, the Telecommunications Act of 1934 instituted the so-called "Fairness Doctrine."[6] This doctrine essentially provides that

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[6] Telecommunications Act of 1934, § 3(h). During the rise of the Rush Limbaugh Show, a conservative political radio program, many commentators felt that the "Fairness Doctrine" should have been used by the Commission to provide a more liberal political view on AM Radio.

broadcasters should give equal time to political candidates.[7] However, the doctrine is infrequently enforced by the Commission and complicated by the protections of the 1st Amendment. Most certainly, this criticism is not limited to this particular statute.

The Advisory Committee recommended in its report that television broadcasters voluntarily provide 5 minutes each evening for "'candidate-centered discourse'" 30 days before an election. Although not officially recommended, a majority of the Committee desired to have broadcasters required to provide up to 20 minutes of what is basically "free" political airtime. Once again, even in this political campaign context, the best remedy is found in the free market. Political candidates which raise money given to them voluntarily by individuals, corporations, unions, and other special interests should be allowed to spend it, if they so choose, on television advertising. Candidates are perfectly free to choose not to purchases advertisements and spend their resources on other media, and this campaign freedom should be left unencumbered by federal regulations.

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[7] In fairness to the Commission, the decision of the U.S. Supreme Court in *FCC v. Midwest Video Corp.*, 440 U.S. 689 (1979) in the context of cable television regulations should be noted. In regard to the so-called "fairness doctrine," a majority of the court stated:

> The language of § 3(h) is unequivocal; it stipulates that broadcasters shall not be treated as common carriers. As we see it, § 3(h), consistently with the policy of the Act to preserve editorial control of programming in the licensee, forecloses any discretion in the Commission to impose access requirements amounting to common-carrier obligations on broadcast systems.

Midwest Video Corp. at 140 n. 9.

In addition, such requirements raise similar 1st Amendment questions as does the so-called "Fairness Doctrine." The federal government and its associated bureaucracy cannot determine what is fair and which political candidate deserves "equal time." It is a self-interested party and will undoubtedly be biased by those candidates which appreciate its needs. Rather, the free market and private enterprise system are the best arenas for this campaign discourse.

This view is reflected by the notice of inquiry which states that in 1996 the National Association of Broadcasters (NAB) voluntarily devoted $148.4 million to political campaigns. In addition, private corporations like A.H. Belo provided free airtime for candidates. It is my firm belief that this kind of activity can only be supported by the free enterprise economic system of our Nation, and not by so-called "reform regulation."

The Commission should resist proposals that as a part of licensure digital broadcasters voluntarily provide free airtime to candidates, and it should explicitly reject any mandatory requirements recommended albeit not officially by the Advisory Committee.

CONCLUSION

As a former federal government employee, I realize that most employees and even federal agencies have the best intentions at heart. In the words of one of my former employers, "The people of government are good, it is just the bureaucracy that gives us a bad result." It is my hope that the Commission will seriously consider these brief comments and more importantly the original drafters' intent of the Telecommunications Act of 1996.

The Commission should work with broadcasters to ensure that as a requirement for licensure digital television broadcasters provide some kind of emergency services, protection of children against obscenity, and limited services for the disabled. However, the Commission should explicitly reject proposals for affirmative action and free airtime in the brave new world of digital television.

Sincerely,

Ben M. Rose

To: Magalie Roman Salas, Secretary, Federal Communications Commission

From: Darren Mitchell

CC: Professor Glenn H. Reynolds

Date: March 17, 2000

Re: Proposed Rulemaking (Docket No. FCC 99-390), Public Interest Obligations of Television Broadcast Licensees, 65 Fed. Reg. 4211 (January 26, 2000).

Secretary Salas:

I am a third-year law student at the University of Tennessee College of Law, and I am writing to add my voice to the public debate over the proper scope of public interest activities/obligations required of broadcasters in the digital television age. There are a number of topics in this area that I would like to comment on; such as children's programming, increasing diversity in the broadcast industry, and making television more accessible to people with disabilities. However, in the interests of brevity I will confine myself to commenting on that section of the proposed rulemaking dealing with enhancing political discourse.

The first question one might ask is whether enhancing political discourse is a proper, or even desirable, role for television broadcasters. However, it may be a little late in the process to ask this question since "[t]he Commission has long interpreted the statutory public interest standard as imposing an obligation on broadcast licensees to air programming regarding political campaigns." 65 Fed. Reg. 4211, 4216 (January 26, 2000). Additionally, one might wonder if "airing programming regarding political campaigns" necessarily promotes or enhances political discourse. If the programming in question is a debate between candidates, or a one-on-one

interview of a candidate by a journalist, or a news report/documentary about a political issue or campaign, or similar programming, then such programming most likely does enhance political discourse. On the other hand, if the programming in question involves paid political commercials, or the quadrennial love-ins of the respective national parties, then the political discourse, although certainly affected, is by no means enhanced. However, the question presented is not whether television broadcasters should be required to enhance political discourse, but rather to what extent television broadcasters should be required to enhance political discourse and what form such enhancement will take. Specifically, "whether, and how, broadcasters' public interest obligations can be refined to promote democracy and better educate the voting public." 65 Fed. Reg. 4211, 4216 (January 26, 2000).

The question whether broadcaster's public interest obligations *can* be refined is, of course, distinct from the question whether said obligations *should* be refined. The simple answer is that any and all products of human endeavor can be refined. For example, Article V of the United States Constitution provides a mechanism whereby the Constitution can be amended when deemed necessary. Amendment is a type of refinement, and the Constitution has been so "refined" twenty-seven times to date. Therefore, the public interest obligations in question can undoubtedly be refined to promote democracy and educate the voting public, and I suggest a few such refinements below. However, whether broadcasters' public interest obligations can be so refined in such a way as to take advantage of the unique aspects and capabilities of digital television is a separate question entirely.

I am neither a digital television expert, nor an authority on communications law. Therefore, I am not in a position to recommend refinements specific only to digital television. At least, not in the area of promoting democracy or educating the voting public. The suggestions that follow are as applicable to analog television broadcasters as to digital television broadcasters, with one exception. Digital broadcasters can multicast separate channels simultaneously over the same assigned frequency. Whatever rules are adopted to enhance political discourse should ensure that broadcasters are prevented from segregating all of their political programming on one program stream. Instead, broadcasters should be required to offer such programming on each of its DTV program streams. Furthermore, such programming should not be cumulative. For example, if the Commission were to adopt the Advisory Committee's recommendation that broadcasters provide five minutes each night between 5:00 p.m. and 11:35 p.m. for "candidate-centered discourse" thirty days before an election, then broadcasters should be required to provide five minutes per night on each program stream rather than five minutes per night spread out over multiple program streams. If a broadcaster multicasts over five program streams simultaneously, then said broadcaster would have to provide five minutes of "candidate-centered discourse" on each program stream; not one minute per program stream for a total of five minutes.

A stated goal of the proposed rulemaking is to improve candidate access to television and thus improve the quality of political discourse. I believe that the premises underlying this goal are faulty in that there is no evidence that accomplishing the former will necessarily result in the latter. In fact, there is considerable evidence to the contrary as demonstrated by the proliferation of negative attack ads in recent political campaigns. Be that as it may, the following suggestions